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NTSB Order No. EA-4351

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 18th day of April, 1995

_____)	
DAVID R. HINSON,)	
Administrator,)	
Federal Aviation Administration,)	
)	
Complainant,)	
)	Docket SE-13580
v.)	
)	
SOMERSET AVIATION CORP.,)	
)	
Respondent.)	
_____)	

OPINION AND ORDER

Respondent has appealed from the oral initial decision of Administrative Law Judge William E. Fowler, Jr., rendered at the conclusion of an evidentiary hearing on October 21, 1994.¹ The law judge affirmed the Administrator's order of revocation charging respondent with violations of sections 135.13(a)(2), 135.15(b), 135.17(b), 135.21(a), 135.27(b), 135.63(a)(4), and 135.327(a) of the Federal Aviation Regulations ("FAR," 14 C.F.R.

¹An excerpt from the hearing transcript containing the initial decision is attached.

Part 135).² As discussed below, we deny the appeal.

The Administrator alleged in the February 25, 1994 order of revocation (complaint), and Somerset admitted, that 1) By letter dated May 18, 1993, Somerset informed the Portland, Maine FAA Flight Service District Office (FSDO) that Mr. Charles Lovett had resigned as president of Somerset, that Somerset's principal place of business had changed, and that the lease covering Somerset's only aircraft had been terminated; 2) By letter dated June 2, 1993, Somerset advised the FAA that it "was presenting a new individual to act as Director of Operations and Chief Pilot, and that a new aircraft, a Beech F33A[,] was being added to the operating certificate"; 3) FAA personnel conducted a base inspection at Somerset's principal place of business on August 17, 1993; and 4) By letter dated August 27, 1993, Somerset requested "to amend its operations" to reflect these changes in personnel, aircraft, and location.

The Administrator also alleged, and Somerset disputed, that Somerset failed to: 1) File an application to amend its Air Taxi Certificate and Operations Specifications to reflect these changes at least 15 days before the proposed effective date; 2) Include the changes in its operating manual; 3) Keep current a manual "setting forth it's [sic] procedures and policies acceptable to the Administrator"; 4) Notify the FSDO in writing before changing the location of its business office; 5) Keep an individual record of each pilot used in Part 135 operations; and

²See Appendix for pertinent regulations.

6) Prepare a written training program. Based on all the allegations, the Administrator charged that "Somerset cannot show, to the satisfaction of the Administrator, that Somerset is able to conduct the kind of operation for which Somerset sought authorization in compliance with applicable regulations," and is not qualified to operate under a Part 135 Air Taxi certificate. The law judge affirmed the Administrator's order in its entirety.

On appeal, respondent contends that all the alleged violations are de minimis paperwork violations and that, even if Somerset had not been in compliance, revocation was an excessive, unwarranted penalty. Somerset also argues that the law judge should have taken into account that Somerset "substantially complied" with the regulations and, in any event, did not operate under its certificate after being notified of the alleged violations.

The Administrator's only witness, FAA inspector Gary Readio, who was assigned to Somerset in October 1992, described the following events.³ Mr. Readio was informed in May 1993, first by telephone and later by letter, of changes in personnel at Somerset (President, Director of Operations, and Chief Pilot),

³Mr. Readio first discussed at length problems that Somerset's former Director of Operations had with a failed checkride and subsequent enforcement action. (Transcript (Tr.) at 12-23.) Administrator v. Hamre, NTSB Order No. EA-4232 (1994). Respondent objected once to this testimony at the hearing. After considering the objection, the law judge allowed Mr. Readio to continue to testify on the subject. On appeal, respondent asserts that the subject was irrelevant hearsay. In any event, we have found that this testimony is not pertinent to the charges at issue and thus have not utilized it in reaching our decision.

and change in business address.⁴ He was also notified that Somerset wanted to add a new aircraft to its operating certificate and operating specifications. (Tr. 24-31, Exhibits (Ex.) A-1, A-2.) Apparently, Somerset did not provide advance notice of a change of business address, in violation of FAR section 135.27(b), and did not provide the requisite 15-day notice for the amendment of its operating certificate as required under section 135.15(b). Regarding the requirement to keep a current operations manual, Mr. Readio testified that as of the time of the revocation order, the manual had not been updated. The amended version was forwarded to him in August 1994, long after the enforcement action was initiated, and was "grossly inadequate." (Tr. at 48.) In response to the question of whether or not he received the 15-day notice to amend the operations specifications, Mr. Readio stated that the FAA "probably did," but the submissions were incomplete. (Tr. at 34-37.)

Mr. Readio conducted an inspection of Somerset in June 1993 at its new business office. He had been advised by telephone that all the records had been transferred to the new location and "everything was all set" for the inspection. (Tr. at 39.) When he arrived, there was just one person at the office. She directed Mr. Readio to a box that contained all the available records, but did not know if the records were complete or how to

⁴Mr. Readio testified that a carrier must formally request to have the same person act as both Director of Operations and Chief Pilot, as it is something the FAA must approve.

present the records for an inspection. Following this unsuccessful inspection, Somerset's new Director of Operations/Chief Pilot and President assured Mr. Readio several times that Somerset would come into compliance and that all the necessary details would be addressed. These promises remained unfulfilled. (Tr. at 43-44.)

After receiving the incomplete submission for the new operating manual in August 1994, Mr. Readio conducted another inspection of Somerset's base of operations.⁵ (Tr. at 49-54.) There were no pilot flight and duty records and the training manual was one prepared for another company and thus insufficient. (Tr. at 52-53.) Mr. Readio stated that since he took over as the inspector for Somerset in 1992, he "hadn't seen any real substantive compliance with the regulatory requirements." (Tr. at 47.)

The law judge, apparently finding Mr. Readio's testimony credible, determined that the Administrator proved the charges by a preponderance of the evidence. He found that, although the Administrator made "every effort" to bring respondent into compliance, respondent could not or would not comply. Based on his factual findings, the law judge concluded that Somerset lacks the requisite qualifications of an air taxi certificate holder.

⁵Respondent argues that any testimony referring to events that occurred after the issuance of the revocation order, dated February 25, 1994, is not pertinent to the charges. We disagree. In this instance it is quite probative, in terms of the carrier's compliance disposition, that as of August 1994, Somerset still had not come into compliance with the applicable regulations.

While compliance with each recordkeeping regulation is important in and of itself, even more significant is what it represents, namely, a carrier's general disposition towards its regulatory obligations and responsibilities. Somerset's repeated failure to comply with the regulations governing Part 135 operators is indicative of, at best, apathy toward its regulatory obligations and, at worst, a willful lack of concern for those obligations. In any event, the law judge's finding that Somerset was either unwilling or unable to comply with the Part 135 regulations is amply supported in the record.

Lastly, respondent argues that even if it did commit the alleged violations, revocation of its operating certificate is unduly harsh for recordkeeping infractions. The violations and pattern of conduct, however, represent more than mere errors in recordkeeping. Rather, they suggest either an inability or a refusal to comply with the regulations, which demonstrates that Somerset is not qualified to hold an operating certificate.⁶

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent's appeal is denied; and
2. The Administrator's order and the initial decision are affirmed.

HALL, Chairman, FRANCIS, Vice Chairman, and HAMMERSCHMIDT, Member of the Board, concurred in the above opinion and order.

⁶See Administrator v. Eagle Commuter Airlines, 5 NTSB 1106, 1110 (1986).

APPENDIX

§ 135.13 Eligibility for certificate and operations specifications.

(a) To be eligible for an ATCO [air taxi/commercial operator] operating certificate and appropriate operations specifications, a person must--

* * * *

(2) Show, to the satisfaction of the Administrator, that the person is able to conduct each kind of operation for which the person seeks authorization in compliance with applicable regulations....

§ 135.15 Amendment of certificate.

* * * *

(b) The certificate holder must file an application to amend an ATCO operating certificate at least 15 days before the date proposed by the applicant for the amendment to become effective, unless a shorter filing period is approved. The application must be on a form and in a manner prescribed by the Administrator and must be submitted to the FAA Flight Standards District Office charged with the over-all inspection of the certificate holder.

§ 135.17 Amendment of operations specifications.

* * * *

(b) The certificate holder must file an application to amend operations specifications at least 15 days before the date proposed by the applicant for the amendment to become effective, unless a shorter filing period is approved. The application must be on a form and in a manner prescribed by the Administrator and be submitted to the FAA Flight Standards District Office charged with the over-all inspection of the certificate holder.

§ 135.21 Manual requirements.

(a) Each certificate holder, other than one who uses only one pilot in the certificate holder's operations, shall prepare and keep current a manual setting forth the certificate holder's procedures and policies acceptable to the Administrator. This manual must be used by the certificate holder's flight, ground, and maintenance personnel in conducting its operations. However, the Administrator may authorize a deviation from this paragraph if the Administrator finds that, because of the limited size of the operation, all or part of the manual is not necessary for guidance of flight, ground, or maintenance personnel.

§ 135.27 Business office and operations base.

* * * *

(b) Each certificate holder shall, before establishing or changing the location of any business office or operations base, except a temporary operations base, notify in writing the FAA Flight Standards District Office charged with the overall inspection of the certificate holder.